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**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARIA DEL SOCORRO GARCIA
ARROYO; et al.,

Petitioners,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-75375

Agency Nos. A79-587-269
A79-587-270

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 5, 2005 ^{**}

Before: GOODWIN, W. FLETCHER, and FISHER, Circuit Judges.

Maria Del Socorro Garcia Arroyo and Francisco Garcia, married natives and
citizens of Mexico, petition for review of the Board of Immigration Appeals'

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by Ninth Circuit Rule
36-3.

^{**} The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

(“BIA”) summary affirmance of the immigration judge’s (“IJ”) denial of their applications for cancellation of removal. We have jurisdiction under 8 U.S.C. § 1252. *See Martinez-Rosas v. Gonzales*, 424 F.3d 926, 930 (9th Cir. 2005).

Reviewing the IJ’s decision as the final agency action, *Falcon Carriche v. Ashcroft*, 350 F.3d 845, 849 (9th Cir. 2003), we grant the petition for review and remand for further proceedings.

The petitioners contend that they were deprived of their due process right to a “full and fair hearing,” a claim we review de novo. *Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000). To prevail, the petitioners must show that the proceeding was so fundamentally unfair that they were prevented from reasonably presenting their case. *Id.* They must also demonstrate prejudice, meaning that the outcome of the proceeding may have been affected by the alleged due process violation. *Id.*; *see also Reyes-Melendez v. INS*, 342 F.3d 1001, 1006 (9th Cir. 2003).

To determine whether the petitioners established that removal would cause “exceptional and extremely unusual hardship” and therefore entitle the Attorney General to consider cancelling the petitioners’ removal under 8 U.S.C. § 1229b(b)(1)(D), the IJ had to determine the nature, severity, treatment options, and

prognosis of Wendy's eye disorder. On rehearing, we hold that the petitioners were not given a reasonable opportunity to meet that burden.

The IJ denied the petitioners' request to introduce the testimony of Wendy's doctor, who would have provided relevant, probative, and non-cumulative evidence about Wendy's eye disorder. Because the other evidence in the record does not explain Wendy's condition with any particularity, the doctor's testimony was essential to the petitioners' hardship claim. Among other things, it is evident from the transcript of the hearing that the IJ did not understand the medical terminology in the written materials that had been supplied by the petitioners. Further, it is likely that if the doctor had been permitted to testify he would have been able to respond to the suggestion by the government's counsel that Wendy's eye disorder was similar to a problem from which counsel's dog had suffered and from which the dog had been readily cured by eye drops. Thus, the IJ's refusal to permit the doctor's testimony deprived the petitioners of their due process right to a full and fair hearing. *See Lopez-Umanzor v. Gonzales*, 405 F.3d 1049, 1057 (9th Cir. 2005) ("Due process principles prohibit an IJ from declining to hear relevant testimony because of a prejudgment about . . . the probative value of [the] testimony.") (internal quotation marks omitted); *see also Zolotukhin v. Gonzales*, 417 F.3d 1073, 1075 (9th Cir. 2005).

Moreover, the absence of the doctor's testimony "may well have affected the outcome of the proceeding." *Kaur v. Ashcroft*, 388 F.3d 734, 738 (9th Cir. 2004). "We may infer prejudice even absent any allegations as to what the [doctor] might have said if the IJ had not . . . refused to permit [his] testimony." *Zolotukhin*, 417 F.3d at 1077. Here, the record contains evidence that Wendy would have severely limited access to medical treatment in Mexico. Accordingly, if more were known about Wendy's eye disorder, the petitioners might have been able to establish the requisite hardship to qualify for cancellation. Thus, the IJ's refusal to allow the petitioners to adduce such evidence through the testimony of Wendy's ophthalmologist may well have affected the outcome of the proceeding. *See Lopez-Umanzor*, 405 F.3d at 1058; *Colmenar*, 210 F.3d at 972.

We therefore grant the petition and remand the petitioners' case to the BIA for further proceedings to determine their eligibility for cancellation of removal. On remand, the petitioners shall be allowed to present the testimony of Wendy's doctor. Nothing in this disposition is intended to preclude either the government or the petitioners from presenting additional evidence regarding the medical condition of the petitioners' other daughter, Lessly.

PETITION FOR REVIEW GRANTED; REMANDED.